

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.3880 & 3955 of 2017

COMMON ORDER:

The genesis of these two revisions is the common order, dated 18.07.2017, of the learned XX Junior Civil Judge, City Civil Court, Hyderabad, passed in IA.Nos.527 & 528 of 2017 in OS.No.197 of 2015 filed by the unsuccessful petitioners-defendants.

2. I have heard the submissions of Sri M.V.Pratap Kumar, learned counsel appearing for the revision petitioners-defendants 1 to 3 and of Sri V.S.Sudhakar, learned counsel appearing for the respondent-plaintiff. I have perused the material record.

3. The facts which lie in a narrow compass, in brief, are as follows:

The plaintiff brought the suit against the defendants 1 to 5 including the petitioners herein-defendants 1 to 3 for a perpetual injunction in respect of the house property consisting of six rooms, more fully described in the schedule annexed to the plaint. Defendants 1 to 3 are resisting the suit. During the course of trial, after the closure of the evidence on the side of the plaintiff, the affidavit of the 1st defendant-DW1 in lieu of her examination-in-chief was filed and it was taken on record and the suit was finally posted to 27.06.2017 for cross examination of DW1. On that day, for the absence of the 1st defendant-DW1 at the time when the matter was called, her examination in chief was eschewed from consideration and the suit was posted for hearing arguments. Therefore, the defendants 1 to 3 filed the afore-stated IAs - one under Section 151 of the Code of Civil Procedure, 1908, ('the Code', for short) for reopening the evidence on the side of the defendants 1 to 3; and, the other under Order XVIII Rule 17 read with 151 of the Code requesting to set aside the order, dated 27.06.2017, whereby the chief examination of DW1 was eschewed

and to recall DW1 for cross examination. The said applications were resisted by the plaintiff by filing counters. As already noted, by the common order impugned in these revisions, the petitions of the defendants 1 to 3 were dismissed by the trial Court. Therefore, the defendants 1 to 3 are before this Court.

4. The case of the defendants 1 to 3, as stated in the affidavit of the 1st defendant, in support of the above requests is as follows:

DW1 already filed her affidavit in lieu of examination-in-chief and it is taken on record. The suit was adjourned to 27.06.2017 for cross examination of DW1. She attended the Court on that day to give evidence. While waiting in the Court for her advocate, she felt severe pain in her abdomen and also giddiness. Therefore, she was not in a position to wait in the Court any longer and hence, she left the Court premises without waiting for recording of her cross-examination by the Court. As she was not present on that day when the matter was called, the trial Court was pleased to eschew her examination in chief and posted the matter for hearing arguments. In the circumstances, the absence of DW1 before the trial Court, on 27.06.2017, for the purpose of cross examination was not intentional or deliberate but was only due to genuine and *bona fide* reasons stated supra. Her evidence is essential for the purpose of arriving at a just decision in the suit. The defendants 1 to 3 are having good case on merits of the matter. Hence, the petitions are filed.

5. The defence of the plaintiff in his counter, in brief, is as follows:

The averments in the affidavits filed in support of the petitions are false. The allegations that the 1st defendant (DW1) attended the Court, on 27.06.2017, and that she left the Court hall, as she became unwell while present in the Court hall are incorrect. The defendants 1 to 3 have not at all come to Court, on 27.06.2017, to attend the hearing of the case. Their counsel requested for a pass over for producing DW1 before the Court for her cross examination. The Court waited till 05:30 PM. The plaintiff and his counsel

were also present in the Court. The counsel for the defendants 1 to 3 could not produce DW1 before the Court for recording her cross examination. Hence, the Court was pleased to eschew her examination-in-chief from consideration and posted the matter for hearing arguments. When the plaintiff's counsel was ready to advance arguments in the suit, the petitions are filed by the defendants 1 to 3. The absence of DW1 on the afore-stated date is not her first absence. The defendants 1 to 3 were given several opportunities for adducing evidence on their side and they failed to avail the said opportunities and, therefore, the trial Court rightly eschewed the chief examination of DW1 from consideration and posted the matter for hearing arguments. The petitions are liable for dismissal in limine.

6. Learned counsel for the petitioner would submit that in view of the explanation offered by the defendants 1 to 3 for the absence of DW1 before the trial Court, on 27.06.2017, and as the evidence of DW1 is essential for arriving at a just decision in the matter and as the matter is pending before the trial Court and as the defendants 1 to 3 have also filed a suit for eviction of the plaintiff who is a tenant in the suit schedule property from the said property, it is just and fair to give an opportunity to the defendants 1 to 3 by allowing their requests. He would also submit that the defendants 1 to 3 are prepared to abide by any conditions that may be imposed by this Court in the event their requests are granted as prayed for.

7. Learned counsel for the plaintiff while supporting the orders of the Court below and while reiterating the pleaded case of the plaintiff which is already stated supra drew the attention of the Court to the contents of the impugned common orders wherein the trial Court extracted the dates of the posting of the suit for cross examination of DW1 from time to time and contended that the trial Court after giving reasonable and fair opportunities eschewed the chief examination of DW1 for her absence, on 27.06.2017, and that, therefore,

the trial Court need not be faulted for passing the impugned orders. He would further submit that the absence of DW1 and her sisters on the date of the adjournment by the time the matter was called is deliberate. In the course of arguments he did not dispute that DW1 attended the Court on that day but stated that she was not present when the matter was again called after by the Court for recording her cross examination.

8. I have given earnest and thoughtful consideration to the facts and submissions.

9. The plaintiff is claiming to be a tenant in possession of the suit schedule property. He is *inter alia* denying the title of the defendants 1 to 3. He brought the suit for a perpetual injunction against the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. In the written statement filed by the 1st defendant several contentions were raised and it is *inter alia* stated that the defendants 1 to 3 are the absolute owners of the property stated therein and that the plaintiff who is a tenant of the said property of the defendants 1 to 3 is irregular in payment of monthly rents since a long time and that he was not acceding to their request to enhance the rents since a long time and that since the month of January, 2015, the plaintiff stopped paying rents despite repeated requests and demands of the defendants 1 to 3 and that the defendants 1 to 3 have filed petition before the Court of the learned Rent Controller for eviction of the plaintiff from the property stated in the written statement, which is in his occupation as a tenant. During course of trial, the plaintiff was examined as PW1. When the suit is coming for the evidence of defendants 1 to 3, the 1st defendant filed her affidavit in lieu of examination in chief and it is taken on record. Thereafter, the suit was adjourned on some occasions as DW1 was absent. Finally the matter was adjourned to 27.06.2017. However, according to the defendants 1 to 3, DW1 attended the trial Court, on 27.06.2017, to give

evidence and that while she was waiting in the Court for her advocate, she felt severe pain in her abdomen and also felt giddiness and that, therefore, she was not in a position to wait in the Court any longer and, hence, she left the Court premises without waiting for recording of her cross-examination by the Court and that as she was not present on that day when the matter was called, the trial Court was pleased to eschew her examination in chief and posted the matter for hearing arguments. Though in the counter filed before the trial Court, the plaintiff categorically averred that defendants 1 to 3 did not at all attend the Court, on 27.06.2017, and in-deed the order of the trial Court also reflects the said fact, the learned counsel appearing for the plaintiff before this court during the course of arguments stated that DW 1 attended the Court, on 27.06.2017, but left the Court even before the matter was called and that she was absent when the matter was called by the trial Court for recording her cross examination and that, therefore, the order passed by the trial Court is justified. However, learned counsel for the defendants 1 to 3 would submit that in view of the contentions and rival contentions and the eviction proceedings pending before the learned Rent Controller, the evidence of DW1 is essential for a just decision in the suit and, therefore, an opportunity may be granted to the defendants subject to terms. Though the submission in the counter of the plaintiff is at variance from the submissions made on behalf of the plaintiff before this Court, the fact of the matter is that DW1 was absent before the trial Court when the matter was called on that day for recording her cross examination. Therefore, considering the admitted fact that DW1 was absent on that day when the matter was called before the trial Court for recording her cross examination, this Court deems it appropriate to examine the matter only by taking note of the fact that DW1 was absent when the matter was called on that day without dilating on the aspect as to whether she was present earlier on that day before the trial Court. Be that as it may.

10. Having regard to the facts and submissions and as the matter is before the trial Court and as providing an opportunity to the defendants 1 to 3 to adduce evidence in support of their defence is essential for a just decision in the matter, this Court finds that one more opportunity can be given to the defendants 1 to 3 as such a course meets the ends of justice. Further, to offset the hardship that may be caused to the plaintiff on account of the delay in the disposal of the suit, the reliefs can be granted subject to terms.

11. In the result, the Civil Revision Petitions are allowed and the common order, dated 18.07.2017, impugned in these revisions is set aside. As a sequel, IA.Nos.527 & 528 of 2017 are allowed and the order, dated 27.06.2017 eschewing the examination in chief of DW1 is set aside and the evidence on the side of the defendants is reopened and DW1 is recalled for her cross examination, however, subject to the condition that the defendants 1 to 3 shall pay to the plaintiff through his counsel in the suit before the trial Court or deposit to the credit of the suit before the trial Court, Rs.2,000/- in all, as costs, within two (02) weeks from the date of receipt of a copy of this order. On the defendants 1 to 3 paying/ depositing the afore-said costs, the trial Court shall take up the matter for cross examination of DW1 and endeavour to dispose of the suit in strict accordance with the procedure established by law as expeditiously as possible. It is needless to state that on failure of the defendants 1 to 3 to comply with the direction in regard to payment/ deposit of costs, the common orders of the court below impugned in these revisions shall stand revived and the revisions shall stand dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

16.08.2017
Vjl

M. SEETHARAMA MURTI, J